

GOVERNMENT PROPOSED JURY INST. NO. 208

False Document -- Offense Charged

The information or indictment sets forth _____ counts or charges.

Count I charges that on or about the _____ day of _____, 19__, in the ____
_____ District of _____, the defendant, _____, a resident of
_____ did willfully file a document with the Internal Revenue Service, United
States Treasury Department, at _____, which the defendant knew to be false as to
an important matter.

Devitt, Blackmar and O'Malley, *Federal Jury Practice and Instructions* (4th Ed. 1990), Section
56.16 (modified)

GOVERNMENT PROPOSED JURY INST. NO. 209

Statute Defining Offense

Section 7207 of the Internal Revenue Code provides, in part, as follows:

Any person who willfully delivers or discloses, to the Secretary [*of the Treasury*] any list, return, account, statement or other document, known by him to be false as to any material matter, shall be [*guilty of an offense against the United States*].

26 U.S.C. § 7207

Devitt, Blackmar and O'Malley, *Federal Jury Practice and Instructions* (4th Ed. 1990), Section 56.17 (modified)

GOVERNMENT PROPOSED JURY INST. NO. 210

False Document -- Essential Elements

In order to sustain its burden of proof for the crime of filing a false document as charged in Count ___ of the indictment [*information*], the government must prove the following three elements beyond a reasonable doubt:

One: The defendant _____ filed a document with the Internal Revenue Service that contained false information as, detailed in the indictment [*information*], as to a material matter;

Two: The defendant knew that this information contained in this document was false; and

Three: In filing this false document, the defendant _____ acted willfully.

Devitt, Blackmar and O'Malley, *Federal Jury Practice and Instructions* (4th Ed. 1990), Section 56.18

GOVERNMENT PROPOSED JURY INST. NO. 211

False Document -- Essential Elements

Title 26, United States Code, Section 7207, provides in part that:

"Any person who willfully delivers or discloses to the Secretary [*of the Treasury*] any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter [*shall be guilty of an offense against the United States.*]"

In order to establish the offense of filing a [*false return*] **1** there are two essential elements which the Government must prove beyond a reasonable doubt.

First: That the defendant filed an [*income tax return*] **1** which was false in the respects charged in the indictment; and

Second: That the defendant did so willfully, as charged.

It is not necessary, however, that the government be deprived of any tax by reason of the filing of [*the return*] **1** or that it be shown that additional tax is due to the government.

A declaration is "false" if it was untrue when made and was then known to be untrue by the person making it. A declaration contained within the document is "false" if it was untrue when used and was then known to be untrue by the person using it.

The "materiality" of the allegedly false statements is not a matter with which you are concerned, but rather is a question for the court to decide. You are instructed that the false statements charged, if they were made, were material statements.

Pattern Jury Instructions, Criminal Cases, Fifth Circuit (1983 Ed.), Offenses in Other Titles, Instruction No. 50, p. 158

NOTE

1 This instruction refers to an "income tax return" as the false document in issue. It is important to note that Section 7207 prosecutions are ***not*** authorized by the Tax Division, except in very limited circumstances, where the false document is a federal income tax return. *See* Section 16.03, *supra*

GOVERNMENT PROPOSED JURY INST. NO. 213

False Document -- Essential Elements

The defendant is charged in [*Count* _____ *of*] the indictment [*information*] with filing a false [*document*] in violation of Section 7207 of Title 26 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant filed a [*document*] knowing that it contained false information; and

Second, that the defendant acted for the purpose of evading the defendant's duty under the tax laws and not as a result of accident or negligence.

Manual of Model Criminal Jury Instructions, Ninth Circuit, Instruction No. 9.06D (1992)

GOVERNMENT PROPOSED JURY INST. NO. 214False Tax Return 1

Title 26, United States Code, Section 7207, makes it a Federal crime or offense for anyone to willfully file a [*federal income tax return*] **1** knowing it to be false in some material way.

The defendant can be found guilty of that offense only if all of the following facts are proved beyond a reasonable doubt:

First: That the defendant filed an [*income tax return*] **1** which was false in a material way as charged in the indictment; and

Second: That the defendant did so knowingly and willfully, as charged.

It is not necessary that the government be deprived of any tax by reason of the filing of the [*return*] **1**, or that it even be shown that additional tax is due to the government, only that the defendant willfully filed a false [*return*]. **1**

A declaration is "false" if it was untrue when made and was then known to be untrue by the person making it. A declaration contained within a document is "false" if it was untrue when the document was used and was then known to be untrue by the person using it.

The "materiality" of the alleged false statements is not a matter for you to determine, but is a question for the court to decide. You are instructed that the false statements charged in the indictment, if they were made, were "material" statements.

Pattern Jury Instructions, Criminal Cases, Eleventh Circuit, Instruction No. 75 (1985)

NOTE

1 This instruction refers to an "income tax return" as the false document in issue. It is important to note that Section 7207 prosecutions are ***not*** authorized by the Tax Division, except in very limited circumstances, where the false document is a federal income tax return. *See* Section 16.03, *supra*

GOVERNMENT PROPOSED JURY INST. NO. 216

Not Necessary to Show Any Additional Tax Due

Although the government is required to prove beyond a reasonable doubt that the defendant willfully filed a false document as charged in Count ____ of the indictment [*information*], the government is not required to prove that any additional tax was due to the government or that the government was deprived of any tax revenues by reason of any filing of any false return.

Devitt, Blackmar and O'Malley, *Federal Jury Practice and Instructions* (4th Ed. 1990), Section 56.19

GOVERNMENT PROPOSED JURY INST. NO. 217Willfulness

To find the defendant guilty of violating Section 7207, you must not only find that he [she] did the acts of which he [she] stands charged, but you must also find that the acts were done willfully by him [her].

The word "willfully," as used in this statute, means a voluntary, intentional violation of a known legal duty. In other words, the defendant must have acted voluntarily and intentionally and with the specific intent to do something he [she] knew the law prohibits, that is to say, with intent either to disobey or to disregard the law.

In determining the issue of willfulness, you are entitled to consider anything done or omitted to be done by the defendant and all facts and circumstances in evidence that may aid in the determination of his [her] state of mind. It is obviously impossible to ascertain or prove directly the operations of the defendant's mind; but a careful and intelligent consideration of the facts and circumstances shown by the evidence in any case may enable one to infer what another's intentions were in doing or not doing things. With the knowledge of definite acts, we may draw definite logical conclusions.

We are, in our daily affairs, continuously called upon to decide from the acts of others what their intentions or purposes are, and experience has taught us that frequently actions speak more clearly than spoken or written words. To this extent, you must rely in part on circumstantial evidence in determining the guilt or innocence of the defendant.

In this regard, there are certain matters that you may consider as pointing to willfulness, if you find such matters to exist in this case. By way of illustration only, willfulness may be inferred from conduct such as *[set forth examples appropriate under the evidence, e.g., making false entries or alteration, or false invoices or documents, concealment of assets or*

covering up sources of income, handling one's affairs to avoid making the records usual in transactions of the kind] and any conduct the likely effect of which would be to mislead or to conceal.

I give you these instances simply to illustrate the type of conduct you may consider in determining the issue of willfulness. I do not by this instruction mean to imply that the defendant did engage in any such conduct. It is for you as the trier of the facts to make this determination as to whether the defendant did or did not.

Devitt and Blackmar, *Federal Jury Practice and Instructions* (4th Ed. 1992), Section 17.07 (modified and supplemented)

Devitt and Blackmar, *Federal Jury Practice and Instructions* (4th Ed. 1990), Section 56.20 (modified)

Pattern Jury Instructions, Fifth Circuit (1990 Ed.), Section 2.88 (Note)

Federal Criminal Jury Instructions of the Seventh Circuit (1980 Ed.), Section 6.03 (modified)

Manual of Model Criminal Jury Instructions for the District Courts of the Eighth Circuit (1992 Ed.), Section 7.02 (Comment)

Manual of Model Jury Instructions for the Ninth Circuit (1992 Ed.), Section 5.05 (Comment)

Pattern Jury Instructions, Criminal Cases, Eleventh Circuit (1985 Ed.), Basic Instructions, Instruction No. 9.1, p. 22 (modified)

Cheek v. United States, 498 U.S. 192, 201 (1991)

United States v. Pomponio, 429 U.S. 10, 12 (1976)

United States v. Bishop, 412 U.S. 346, 360 (1973)

Spies v. United States, 317 U.S. 492, 499 (1943)

United States v. Ashfield, 735 F.2d 101, 105 (3d Cir.), *cert. denied sub nom.*, *Storm v. United States*, 469 U.S. 858 (1984)

United States v. Conforte, 624 F.2d 869, 875 (9th Cir. 1980), *cert. denied*, 449 U.S. 1012 (1980)

United States v. Ramsdell, 450 F.2d 130, 133-134 (10th Cir. 1971)

United States v. Spinelli, 443 F.2d 2, 3 (9th Cir. 1971)

COMMENTS

1 It is not necessary to define the term "willfully" in a tax case in terms of "bad purpose" or "evil motive." *United States v. Pomponio*, 429 U.S. 10, 12 (1976). *See also* Section 8.06[1], *supra*.

2 Willfulness has the same meaning in the felony and misdemeanor sections of the Internal Revenue Code. *United States v. Pomponio*, 429 U.S. 10, 12 (1976).

3 *See also* instructions on willfulness set forth as a part of the instructions on 26 U.S.C. § 7201, *supra*.